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Maine Labor Relations Board Annual Report, Fiscal Year 1990

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ANNUAL REPORT
MAINE LABOR RELATIONS BOARD
Fiscal Year 1990

This report is submitted pursuant to Section 968, paragraph 7, and Section 979-J(1) of Title 26, Maine Revised Statutes.

Introduction

During the past year, the Maine Labor Relations Board (Board) had requests for services from all segments of the public sector that have statutorily conferred rights of collective bargaining. As will be noted later in this report, there were substantial fluctuations in the Board's activities compared to the previous year. While there was a moderate increase in both the actual number and percentage of mediation requests, there were more marked increases in the number of representation petitions filed, in bargaining agent election requests, and in voluntary bargaining unit agreements (Form 1s). Reversing trends noted last year, there were significant decreases in the number of decertification election petitions and in fact-finding requests in FY 1990. Overall the work load of the Board remained essentially unchanged when compared with FY 1989.

The sunset review by the Joint Legislative Committee on Audit and Program Review was completed this year, with the decision that the Board should be continued. Although no other legislative initiatives seriously impacted the jurisdiction or functions of the Board, several matters occasioned comment by the Executive Director or staff through written submissions and/or appearances at committee hearings and work sessions; these are discussed later. During the course of the fiscal year the Legislature enacted several Private and Special Laws to fund and implement collective bargaining agreements for: the five State employee bargaining units represented by the Maine State Employees Association; the State employee unit represented by Council 93, AFSCME, AFL-CIO; two units of Judicial Department employees represented by the Maine State Employees Association; two units of employees of the Maine Technical College system, one represented by Council 93, AFSCME, AFL-CIO, and one represented by the Maine State Employees Association; and one unit of Maine State Troopers

represented by the Maine State Troopers Association.

As in past years, the staff of the Board handled a great many inquiries from public employers and employees or their representatives, the media, and members of the public. The staff continues to be a primary source of information for persons interested in the operations and procedures of Maine's public sector labor laws. In those instances that did not involve matters over which the Board has jurisdiction, the staff continued its policy of providing some orientation for the inquirer and suggesting other agencies or organizations that might be of help. In order to better respond to the numerous public inquiries received, in May the Board's staff met with a staff attorney from the Maine Human Rights Commission and with a representative of the Minimum Wage and Child Labor Division of the Bureau of Labor Standards. The missions of the three agencies were discussed and each gained a better understanding of the others' areas of subject matter jurisdiction, thereby fostering greater accuracy in interagency referrals.

Board staff made only one court appearance in FY 90. Labor Attorney-Mediator Ayotte represented the Board before the Maine Superior Court in the Washington County matter.

The Board's most significant accomplishment over the past year has been the adoption of amended rules and procedures. Through a series of meetings during the summer and fall, the Board members presented and discussed their ideas and directed the staff, under the direction of Board Counsel M. Wayne Jacobs, to prepare a series of drafts, comprehensively amending the procedural rules. Former Board Chairs Hon. Edward S. Godfrey and William M. Houston, Esq., provided valuable insights and advice during this process. In January, the Board finalized its rules proposal and, after due notice, the Board received public comment at a public hearing and through written submissions. After considering the public comments and, in some instances, amending its proposals in response to such comments, the Board formally adopted its amended rules and procedures on April 6th. The amended rules were submitted to the Department of Attorney General for its review, pursuant to 5 M.R.S.A. § 8056(1), and, as of the date on which this report was prepared, such review had not been completed.

In an effort that will be valuable to members of the labor relations community, staff distributed the topical index and accompanying abstracts

of the Board's prohibited practice decisions issued through FY 88 and prepared and distributed an index and abstracts of the Board's representation appeals through FY 89. The composite index includes Superior and Supreme Judicial Court opinions reviewing Board decisions. For a modest fee, copies of the index and abstracts are available upon request; they are also available in the various law libraries throughout the State.

A new primary Board Chair, Peter T. Dawson of Hallowell, and a new First Alternate Employee Representative, Wayne W. Whitney, Jr., of Brunswick, were appointed, and the primary Employee Representative, George W. Lambertson of Readfield, and the Second Alternate Employee Representative, Gwendolyn Gatcomb, of Winthrop, were reappointed by Governor McKernan on September 29th; all were confirmed by the Legislature on October 30th. Chair Dawson was originally appointed to serve as the Second Alternate Chair in December of 1987, and he succeeded William M. Houston, who resigned from the primary Chair position on April 1, 1989. Mr. Whitney served first as an Attorney/Examiner and later as Board Counsel from the spring of 1978 to December 1984, when he joined the firm of McTeague, Higbee, Libner, Reitman, MacAdam and Case in Topsham.

On March 20, 1990, Pamela D. Chute of Brewer was appointed by the Governor as the Second Alternate Chair; Ms. Chute was confirmed by the Legislature on April 10, 1990. Ms. Chute is a member of the firm of Mitchell & Stearns and is interested in labor and employment issues, particularly in the area of human resource development. The other members of the Board continue to be Alternate Chair Jessie B. Gunther of Milo, primary Employer Representative Thacher E. Turner of Norway, First Alternate Employee Representative Dr. Carroll R. McGary of Winthrop, and Second Alternate Employer Representative Jimmy A. McGregor of Coopers Mills. There were no changes in the Board's full-time staff this fiscal year.

Members of the Board staff participated in a variety of meetings, conferences and educational programs this fiscal year. In July of 1989, Executive Director Nancy Connolly Fibish and Labor Attorney-Mediator Marc P. Ayotte attended the week-long annual meeting of the Association of Labor Relations Agencies (ALRA) held in Toronto, Ontario, Canada. Executive Director Fibish attended a meeting on labor-management cooperation spon-

sored by the United States Department of Labor, in Boston, on September 29th. Board Counsel Jacobs addressed a seminar hosted by the Labor and Employment Law Section of the Maine State Bar Association on October 6th.

The Executive Director attended the national conference of the Society of Professionals in Dispute Resolution, from October 18th through the 22nd, in Washington, D.C. Attorney/Examiner Judith A. Dorsey and Labor Attorney-Mediator Ayotte were students at the evidence seminar sponsored by the Maine Trial Lawyers Association on October 20th. Executive Director Fibish took part in Maine's Private Sector Labor-Management Institute, in Portland, on December 4th and 5th.

Labor Attorney-Mediator Ayotte attended the four-day practical negotiating skills exercise sponsored by the American Arbitration Association, in Boston, at the end of March. Clerical staff members Roberta A. Hutchinson and Lorna M. DeAmaral participated in the Fifth Annual Secretarial Symposium conducted by the Bureau of Human Resources in early April. Hearings Reporter Roger A. Putnam enrolled in a three-credit machine shorthand speed-building course at Mid-State College in Auburn that runs from May 13th through July 6th.

On May 8th, Executive Director Fibish represented the Board at the labor relations seminar sponsored by the Maine Municipal Association. Board Counsel Jacobs attended the week-long course in federal labor relations law held at the Judge Advocate School, Department of the Army, in Charlottesville, Virginia, in May. From May 30th through June 1st, Executive Director Fibish attended the Fifth National Labor-Management Conference held by the Federal Mediation and Conciliation Service in Washington, D.C., and subsequently participated in the First National Grievance Mediation Seminar sponsored by Northwestern University's School of Law in Washington, D.C., on June 1-2.

Legislative Matters

Four pieces of legislation passed in the second session of the 114th Legislature had a substantive impact on the Board and the services it provides, and two others set the level of budget cuts for the Board for fiscal years 1990 and 1991.

Public Law 691 limits the collateral estoppel effect of unemployment insurance decisions. Although the Board has had no problem in this regard, other departments and agencies have: Maine courts have found the adjudicatory findings of the Commission to be dispositive in cases brought before other administrative bodies and the courts to adjudicate separate claims arising from the same facts as an unemployment benefit claim. As sponsors of the new legislation stated, the result has been that unemployment benefit hearings have increasingly become the battleground for winning or losing other legal claims. The new legislation will cure that problem.

Public Law 932 amends the law governing services to infants and young children, to require the 1992 annual report for that program to include a report on the status of collective bargaining negotiations for the program's employees. The report may include recommendations on whether the Board's municipal statute should continue to apply, or whether the State labor statute should apply. (Under a law passed last year, the Commission that runs the program is an arm of State government, but the employees in the 16 local offices are considered to be municipal employees.) The Board may wish to offer a recommendation at that time.

Public Law 901 amends the sabbatical leave law for teachers to allow employers and bargaining agents to negotiate all aspects of sabbatical leave except the maximum length of a sabbatical (one year) and the years of service required before such leave may be granted (seven years). This issue is likely to appear in an increasing number of requests to the Board for alternate dispute resolution services.

Public Law 933 makes employees in three physician job classifications at the Department of Mental Health and Mental Retardation State employees, covered by the State labor statute. Negotiations on salary (the only negotiable subject) must begin by September 1, 1990.

Finally, a bill that would have had a substantial negative impact on the Board's mediation program was amended before passage. As originally drafted, the bill would have placed mediators under the Agricultural Marketing and Bargaining Act in the awkward position of commenting on whether parties had maintained unreasonable bargaining positions or had otherwise negotiated in bad faith during mediation. Opposition from

several quarters convinced the Legislature's Agriculture Committee of the inappropriateness of the draft language, and it was removed prior to passage of the bill.

Bargaining Unit and Election Matters

During fiscal year 1990, the Board received 53 voluntary or joint filings (most of them Form 1s) for the establishment of or change in collective bargaining units under its jurisdiction. There were 31 filings in FY 89, 24 in FY 88, 19 in 1987, and 9 in 1986. Of the 53 filings in 1990, 35 were for units within educational institutions, with the overwhelming majority of these being for educational support staff employees, confirming the recent trend toward organization in this group of public employees.

Thirty-six (36) unit determination or clarification petitions (filed when there is no agreement on the composition of the bargaining unit) were filed in FY 90; 30 were for determinations, and 6 were for clarifications. Six (6) of the unit filings actually went to hearing and decision. There were 21 unit filings in 1989, 30 in 1988, 14 in 1987, and 24 in 1986.

After the scope and composition of the bargaining unit is established, either by agreement or by hearing and determination unless a bargaining agent is voluntarily recognized by the public employer, a secret ballot bargaining agent election is conducted by the Board to determine the desires of the employees. During FY 90 there were 12 voluntary recognitions (Form 3s) filed. Fifty-four (54) election requests were filed in FY 90; 35 elections were actually held or are scheduled.

In addition to representation election requests, the Board received 6 requests for decertification/certification, which involves a challenge by the petitioning organization to unseat an incumbent as bargaining agent for bargaining unit members. Four (4) requests resulted in elections.

The Board received 2 straight decertification petitions in FY 90, a significant decrease from the 9 received in FY 89. No new union is involved in these petitions; rather the petitioner is simply attempting to remove the incumbent agent. Elections were conducted in 1 of these matters, and 1 was withdrawn.

There were 7 election matters carried over from FY 89. Consequently, there were 61 such matters requiring attention during the fiscal year; this

compares with 35 in FY 89, 32 in FY 88, 36 in FY 87, and 31 in FY 86. This clearly demonstrates that there was a significant increase in organizational activity during FY 90.

Dispute Resolution

The Panel of Mediators is the statutory cornerstone of the dispute resolution process for public sector employees. Its importance continues to be reflected in its volume of activity and in its credibility with the client community. The activities of the Panel are summarized in this report and are more fully reviewed in the Annual Report of the Panel of Mediators.

New mediation requests received during fiscal year 1990 rose to 115 from 107 in FY 89 and 91 filings in FY 1988. The FY 1990 figure represents the second highest number of filings recorded over the past ten years, exceeded only by the record 120 filings in FY 1987. In addition to the new mediation requests received during the fiscal year just ended, there were 29 matters carried over from FY 1989 that required some form of mediation activity during the year. Thus the total number of mediation matters requiring the Panel's attention in this fiscal year totaled 144, compared to 140 in the previous fiscal year. The activity in both years is continuing evidence of the sustained level of interest in the mediation process shown by the public sector labor relations community. As recorded in the annual reports for the past few years, it is also a continuing measure of that community's confidence not only in the process of mediation, but in the competence and expertise represented by the membership of the Panel as a whole.

That competence and expertise is reflected in the 79 percent settlement rate achieved for matters resolved through mediation efforts during this fiscal year, including carryovers from FY 1989. Prior to last year's report the settlement rate was based only upon settlements achieved in matters that were actually filed during the fiscal year. Since both new filings and cases carried over from prior years contributed to the actual workload of the Panel in the course of a twelve-month period, we have continued the practice initiated last year of reporting settlement figures that represent all matters in which mediation activity has been completed

during the reporting period.

Among the mediation filings were two under the Maine Agricultural Marketing and Bargaining Act, which was amended in 1987 to insert the Panel of Mediators into the contract dispute mechanism between processors and producers who are subject to that statute. Despite the several problems with the Panel's involvement in Agricultural Act mediations noted in last year's report, the two agricultural disputes referred to the Panel in FY 1990 were successfully resolved in mediation with the expenditure of a total of four mediation days.

Fact finding is the second step in the three-step process of statutory dispute resolution. In fiscal year 1990 there were 20 fact-finding requests filed. The 20 requests represent nearly a 50 percent decrease over the last year. Eight (8) petitions were withdrawn or otherwise settled, 6 requests went to hearing (1 of those was "mediated" to a settlement with the aid of the fact-finding panel), 5 petitions are pending hearing, and the parties in 2 of the matters in which a fact-finding report was issued returned to mediation.

Interest arbitration is the third and final step in the statutory dispute resolution process. Under the provisions of the various public employee statutes administered by the Board, a tripartite interest arbitration award is binding on the parties only as to non-monetary issues. Issues involving salaries, pensions and insurance are subject to interest arbitration, but an award on these issues is advisory only, unless the parties agree to be bound on these monetary issues by the arbitration decision. In recent years the Board has received few interest arbitration requests. In FY 90 it received two; there were no interest arbitration requests received in FY 1989. Although the public statutes require that interest arbitration awards be filed with the Board, they generally have not been filed in the past. The two FY 90 awards were filed with the Board. While it is assumed that these were the only interest arbitration awards issued in the public sector during the year, it may be that other parties to arbitration proceedings this year simply failed to provide proper notification to the Board.

Prohibited Practices

One of the Board's responsibilities is to hear and rule on prohibited practice complaints. These matters are heard in formal hearings by the full, three-person Board. Nineteen (19) complaints were filed in FY 90; though this represents a 21 percent decrease from FY 89, it is not out of line with the number of filings in the past six years. During that time, complaints filed have fluctuated from a low of 17 to a high of 25, with the average being 21.

In addition to the 19 complaints filed in FY 90, there were 8 carry-overs from FY 89 and one matter, in which the Board issued a decision in FY 83, where the parties sought a further order this year. During the intervening years, the subject matter of the case had been at issue in litigation before the Superior Court and the parties returned to the Board, seeking clarification and determination of the amount due pursuant to the Board's original make-whole order. The Board conducted 6 hearings during the year, and Board members sitting as a single prehearing officer held prehearing conferences in 12 cases. In 6 matters, the Board issued formal Decisions and Orders; an additional order is being drafted. Two (2) complaints were dismissed for procedural deficiencies; 1 matter has been deferred pending the resolution of related grievance arbitration proceedings; 1 matter has been deferred pending the resolution of a related matter before the Human Rights Commission; and 4 complaints await hearing. Six (6) complaints were dismissed or withdrawn at the request of the parties; such requests generally occur when the complaint is related to contract bargaining and after the parties reach agreement on and ratify the contract.

Appeals

One unit clarification by a Board hearing examiner was appealed to the Board; it was subsequently dismissed at the request of the appellant. Also, in Teamsters Local Union No. 48 v. Washington County Commissioners, No. 89-07 (Me.L.R.B. Apr. 4, 1989), a prohibited practice case, the Board found that the employer had made a unilateral change in a mandatory subject of bargaining, in violation of the statutory duty to bargain. The Board's Decision and Order was appealed to, and reversed by, the Superior Court. Washington County Commissioners v. Teamsters Local Union No. 48, No. CV-89-163 (Me. Super. Ct., Ken. Cty., Oct. 13, 1989). The Board issued a

Decision and Order on Remand, consistent with the Court's decision.

Summary

The following chart summarizes the filings for this fiscal year, along with the previous five years:

	<u>FY 1985</u>	<u>FY 1986</u>	<u>FY 1987</u>	<u>FY 1988</u>	<u>FY 1989</u>	<u>FY 1990</u>
Unit Determination/ Clarification Requests		-33%	-53%	+114%	-30%	+42%
Number filed---	36	24	14	30	21	36
Agreements on Bargaining Unit (MLRB Form #1)		-69%	+111%	+21%	+29%	+71%
Number filed---	29	9	19	24	31	53
Voluntary Recognitions (MLRB Form #3)	-	-43%	-	+125%	+44%	-7.7%
Number filed---	7	4	4	9	13	12
Bargaining Agent Election Requests		-58%	-42%	+43%	-10%	+156%
Number filed---	38	24	14	20	18	46
Decertification Election Requests		+46%	-26%	-40%	+56%	-43%
Number filed---	13	19	15	9	14	8
Mediation Requests		+15%	+22%	-24%	+19%	+7.5%
Number filed---	85	98	120	91	107	115
Fact-Finding Requests		+73%	-5.3%	-17%	+93%	-45%
Number filed---	11	19	18	15	29	20
Prohibited Practice Complaints		+25%	-12%	-23%	+41%	-21%
Number filed---	20	25	22	17	24	19

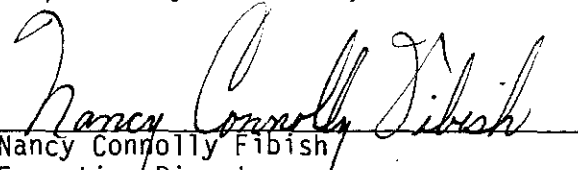
As the summary table indicates, the demand for the Board's services remained stable over the last fiscal year. The increase in organizational

activity, coupled with a significant decline in the number of decertification petitions filed, may well indicate that demand for all of the Board's services will increase in the future.

During FY 90, public sector labor-management relations in Maine continued to exhibit the maturity that has been evident over the past few years. Parties have increasingly relied on the statutory dispute processes to settle their differences, rather than resorting to self-help remedies. The development of labor relations is evidenced by the increased demand for mediation services, the growing willingness of parties to settle prohibited practice cases, and the use of interest arbitration to resolve negotiations impasses. It is too early to determine whether this latter development is a short-term reaction to the Auburn Firefighters case discussed in last year's report or whether it signals a lasting development in employer-employee relations. In sum, the Board's regulatory and dispute resolution services successfully fostered public sector labor peace during the last fiscal year.

Dated at Augusta, Maine, this 27th day of June, 1989.

Respectfully submitted,


Nancy Connolly Fibish
Executive Director
Maine Labor Relations Board